United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

ORIGINAL

74-1693
74-1704

In The

United States Court of Appeals

For The Second Circuit

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

vs.

TILNEY & COMPANY, FREDERICK TILNEY,

Defendants-Appellants.

On Appeal from Judgment of the United States District Court for the Southern District of New York

BRIEF FOR RECEIVER-APPELLEE, JOSEPH C. HOGAN

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STATEMENT OF ISSUES

1. Were all sales of receivership assets conducted in accordance with Title 28 U.S.C. Sections 2001 and 2004?

2. Did the District Court abuse its discretion in refusing to permit the substitution of a particular firm of attorneys as counsel to defendants-appellants?

3. Did the District Court abuse its discretion in awarding certain allowances to the receiver-appellee, to the attorneys for the receivers and to the accountants for the receivers?

4. Did the District Court abuse its discretion in refusing to permit the individual defendant-appellant to appear both pro se and by counsel?

5. Is defendants-appellants' claim of surcharge an attempt to circumvent the doctrine of judicial immunity in order to reduce administrative allowances?

6. Was there sufficient evidence before the District Court to disallow the claim of surcharge?

7. Should the receiver-appellee be awarded the costs and expenses of this appeal, including counsel fees?

STATEMENT OF THE CASE

Preliminary Statement

This is an appeal from an order entered March 20, 1974 in the Southern District of New York, by the Honorable David N. Edelstein, as modified by an order entered April 19, 1974, approving the final account of the receiver and former co-receiver in this equity receivership, denying the individual defendant-appellant permission to proceed pro se on a surcharge application, granting further incidental relief and, in effect, terminating the receivership. It is also an appeal from "all other orders and rulings theretofore made". Although there were scores of other orders and rulings which could be covered by the preceding blanket statement, the brief of defendants-appellants seems to challenge the propriety of the following additional orders:

1. An order entered December 21, 1972, based on an opinion dated October 19, 1972, awarding allowances to the receiver and former co-receiver and to their attorneys and accountants.

2. An order entered April 17, 1972, denying substitution of certain attorneys as counsel for defendants-appellants.

Chief Judge Edelstein presided over all proceedings in the court below.

Prior Proceedings in this Court

The order of April 19, 1974, modifying the order which approved the account, was actually a stay of the return of the remaining assets to the defendants-appellants, pending appeal, unless the defendants-appellants posted bond to cover any additional allowances, costs, and expenses (including counsel fees) which might be awarded because of the appeal. Defendants-appellants suggested a $10,000.00 bond but this was rejected by the court below as inadequate and the court suggested that the parties agree upon the amount of the bond. The defendants-appellants elected not to negotiate, but proceeded directly to this Court by motion dated April 30, 1974, seeking release of the assets upon the posting of a $10,000.00 bond. After a hearing on May 7, 1974, this Court set the amount of the bond at $25,000.00 with the proviso that defendants-appellants satisfy a restraining notice issued by a judgment creditor of the individual defendant-appellant in the amount of $7,074.88. Defendants-appellants, however, were not satisfied in attempting to raise funds sufficient to cover the amount of the bond and restraining notice, but as shown in the affidavit of Frederick Tilney dated July 24, 1974, tried to raise $75,000.00.

The aforementioned affidavit of Frederick Tilney was submitted by defendants-appellants in support of a motion to enlarge their time for the filing of briefs and

appendices and when this Court granted the motion by its order dated July 30, 1974, the receiver-appellee moved the Court on August 1, 1974 to amend the order to provide that if said bond was not filed, and said restraint was not satisfied, by August 15, 1974, the matter be remanded to the District Court for further liquidation, or, in the alternative, for such other relief as this Court deemed proper. The receiver-appellee had no objection to enlargement of time per se but wanted to call the Court's attention to the fact that the assets in his possession consisted primarily of real property subject to mortgage installments, real property taxes, insurance premiums and other expenses and that he had no liquid assets with which to protect said realty from foreclosure, tax sale, casualty, or general deterioration. The receiver-appellee warned this Court that:

> "I am greatly concerned that Mr. Tilney will not be able to obtain the $75,000.00 loan to which he alludes in his affidavit of July 24, 1974."

and went on to explain the reasons for his concern (Aff. of Joseph C. Hogan, sworn to July 31, 1974, p. 3). This Court, however, on August 19, 1974, denied the motion to amend the order and did not suggest any alternative. The receiver-appellee's warning certainly appears to have been justified, for the bond has yet to be filed and the restraining notice remains unsatisfied. The receiver-appellee, then, remains in the uncomfortable position of being charged with the

remaining assets of the estate, but is without funds for their maintenance and protection.

STATEMENT OF FACTS

Preface

Although the receiver-appellee (hereinafter referred to as "Receiver Hogan", or "Hogan", or collectively with the former co-receiver as "receivers") is tempted to respond to each and every scandalous statement and distortion of fact set forth in defendants-appellants' (hereinafter referred to as "defendants") brief, he recognizes that the length limitation provided for under Rule 28(g) Federal Rules of Appellate Procedure renders it impossible to do so if he is to set forth the relevant facts and rules of law. He strongly notes his objection to said brief, however, and urges the Court to carefully scrutinize it in the light of the record of the court below.

This brief will endeavor to state the facts as they actually took place and are supported by the record. However, since the administration of the estate involved the resolution of many complex problems over a 6-1/2 year period, there is considerable overlapping in time, and it is not practicable to recite the facts in precise chronological order. Accordingly, major aspects of the receivership have been set forth in summary fashion, but it should

be understood that the handling of each of the matters summarized was contemporaneous with the handling of one or more of the other aspects of the receivership.

In view of the fact that the former co-receiver I. Alan Harris (hereinafter referred to as "Receiver Harris", or "Harris", or collectively with Receiver Hogan as "receivers") is represented by separate counsel on this appeal, both as appellee and as cross-appellant, certain charges made against Mr. Harris in defendants' brief will be specifically responded to by his counsel and shall not be treated in detail herein.

The Consent Judgment

The proceedings in the court below actually commenced on August 18, 1967 when the Securities and Exchange Commission (hereinafter referred to as "SEC") filed complaint no. 67 Civ. 3153 seeking to enjoin defendant Tilney & Company, a limited partnership, which at that time operated as a securities broker and dealer, and Frederick Tilney, the general partner in said firm, from further alleged violations of section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(a)), and certain rules thereunder and to compel said defendants to file a report of financial condition as required by one of said rules.

On the afore-mentioned date, a Consent Temporary Restraining Order was entered by the District Court enjoining

defendants from such violations and prohibiting the transfer of defendants' assets. This order was followed by a Consent Judgment of Preliminary Injunction (to the same effect as the order) which was entered by the court on August 31, 1967. On September 29, 1967, the court granted a Consent Judgment of Permanent Injunction with provisions similar to the above order and judgment and, in addition, compelled defendant to file a certified report of financial condition by October 6, 1967.

In a second complaint, no. 67 Civ. 4676, filed by the SEC on November 28, 1967 (DJA 11-16*), it was charged that Tilney & Company, aided and abetted by Frederick Tilney, permitted its aggregate indebtedness to exceed 2,000 per centum of its net capital in contravention of the Net Capital Rule (Rule 17 C.F.R. 240.15c3-1). It was specifically alleged that as of August 9, 1967, Tilney & Company required $646,308.99 additional capital in order to comply with the rule, and that although defendants had been able to obtain written releases from Tinker National Bank and Franklin National Bank, dated November 1, 1967 and November 9, 1967, respectively, purportedly absolving Tilney & Company from any liability with respect to certain repurchase agreements entered into between Tilney & Company and said banks, the firm was still in violation of the rule. Considering the withdrawal of the liability of $398,651.00 represented by these repurchase agreements, Tilney & Company

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* References "DJA" are to the Deferred Joint Appendix.

allegedly required $247,657.99 additional capital to comply with the Net Capital Rule. The complaint further alleged that at least from August 9, 1967, Tilney & Co. permitted its adjusted net capital to be less than the $5,000.00 minimum required under the Net Capital Rule. These charges were repeated by the SEC at a hearing before Judge Edelstein on December 6, 1967 (DJA 17-23).

Based on the above-mentioned proceedings, a Consent Judgment (DJA 25-30) was entered by the court on December 18, 1967:

1. Enjoining defendants against operating while in violation of the Net Capital Rule;

2. Restraining defendant, Tilney & Company, defendant Frederick Tilney, individually, and virtually any other person in active concert or participation with them "...from directly or indirectly, transferring, receiving, changing, selling, pledging, assigning or otherwise disposing..." of assets (DJA 26-27); and

3. Appointing Joseph C. Hogan and I. Alan Harris as receivers of all assets and property of, belonging to, or in the possession, custody of, or control of, the defendants, and the receivers were "...authorized, empowered and directed to have full power to marshal such assets and property, prosecute all claims, choses-in-action and suits in equity on behalf of said defendants, to collect and take charge of all and singular thereof and to liquidate

the estate of said defendants in order to pay all just claims and all creditors of the said defendants" (DJA 27). The receivers were also authorized and empowered to employ such attorneys, accountants and other personnel as necessary to discharge their authority (DJA 27-28).

The Commencement of the Receivership

Prior to the inception of the receivership, Tilney & Company had operated from its main office in New York City and from two branch offices in Alaska (DJA 395). Upon their appointment, the receivers closed the two branch offices and took charge of the company's assets, records and remaining operations and centralized all activities in the New York office. As authorized in the Consent Judgment, the receivers appointed B. Bernard Greidinger & Co. (now Hertz, Herson & Co.) as accountants and the firm of Wagner, Quillinan & Tennant as counsel to the receivers.

The receivers, assisted by their accountants, conducted a thorough examination of all books and records of Tilney & Company and the individual defendant, Frederick Tilney, including customer accounts, trade accounts and loan accounts with various banks. The receivers also reviewed all financial statements of Tilney & Company on file with the SEC (DJA 395).

The examination revealed that the customer account records were in utter chaos (DJA 94). In many instances, customers who had paid for securities had been issued written confirmation but the securities claimed to have been purchased in the confirmation were never actually purchased by Tilney & Company (DJA 683-688; 690-691). Frederick Tilney's operation of his business, in fact, led to his indictment on 31 counts of fraud and his ultimate plea of guilty to a reduced charge with a $5,000.00 fine and three years probation (DJA 1169; defendants' brief, p. 18-19).

The firm's bank accounts were also in a state of confusion. There were numerous overdrafts, the largest of which was in the amount of approximately $98,000.00 to Tinker National Bank (discussed in detail below).

Two of the most serious financial problems disclosed by the afore-mentioned examination were that:

1. Demand notes payable to lending banks amounted to $663,334.27 (interest included), but securities pledged as collateral were worth only $616,096.27 (DJA 89-91). The amount due on the notes, therefore, exceeded the value of the collateral by $47,237.99; and

2. As of December 17, 1967, defendants' liabilities exceeded determinable assets by $297,032.34 (DJA 81-86):

	Assets	Liabilities
Tilney & Company	$719,084.32	$ 957,560.76
Frederick Tilney	276,609.13	335,165.03
Totals	$995,693.45	$1,292,725.79

Total Assets	$ 995,693.45
Total Liabilities	1,292,725.79
Deficiency	$ (297,032.34)

These figures do not include certain contingent liabilities, such as a $2 million claim (later a lawsuit) by the City of Nome, Alaska and claims by members of the Tilney family and other Tilney interests totaling $324,771.39 (these will be discussed in detail below).

Liquidation of Securities

Pledged Securities

As noted above, several banks held demand notes totaling $663,334.27 (interest included) toward which securities valued at $616,096.28 were pledged as collateral. A Notice of Appeal was filed by one of said banks, appealing the order of the District Court as to its provision enjoining the liquidation of the pledged assets (DJA 438). The District Court and the receivers realized that successful appeal or the ultimate removal of the injunction would have resulted in wholesale liquidation causing a substantial deficiency. The reason for this was the nature of the securities involved, almost all of which were infre-

quently traded and, consequently, had very thin markets. The receivers negotiated with the banks and persuaded them to withdraw the appeal and obtained an agreement enabling the receivers to liquidate the collateral over a period of several months in order to obtain top market prices (DJA 40-51; 31-32).

The orderly liquidation of these securities and the application of the proceeds to the secured loans is chronicled step by step in Schedule 1 of the Accountants' Report of May 31, 1968 (DJA 87).
The success of the receivers in liquidating these securities is evident, as they transformed an undercollateralization of more than $47,000.00 to an excess of collateral value of approximately $64,000.00 over the principal and interest owing to the banks.

Unpledged Securities

The securities not pledged as collateral were liquidated in the same manner as were the pledged securities, i.e., by a careful orderly process in order to obtain the best price possible. It should be noted that the procedure was established by the court in the consent judgment and in directions on the record. The sales were reflected in the accountants' reports and were manifestly approved by the court at numerous hearings. For example:

"THE COURT: We have proceeded here to liquidate in an orderly fashion, without dumping assets. I thought that any other step would be cruel. And I think that what has been accomplished thus far has certainly been the result of a great deal of diligence and a great deal of effort, in very trying markets, for any and all assets that have to be liquidated."

(DJA 605 . See also: DJA 607-609 ; 100 ; 102-103).

Moreover, the sales were conducted with the full knowledge and approval of the SEC (DJA 606). In addition, Frederick Tilney participated in many of the sales by finding, or attempting to find, purchasers, and he, in fact, approved of or acquiesced in all sales of securities. (DJA 1038-1039 ; 164).

The City of Nome Matter

A major obstacle confronting the receivers was a contingent liability of Tilney & Company to the City of Nome, Alaska, arising out of Tilney & Company's breach of an underwriting arrangement for $910,000.00 entered into with the City. The City commenced a lawsuit seeking $2,000,000.00 from the receivership estate. After reviewing the substantial amount of material in the Tilney files pertaining to the underwriting and after conferences with Mr. Tilney, the City manager and the City attorney for the City of Nome, and after conferences with receivers' Alaskan counsel, the receivers determined that settlement

was warranted by the exposure and that the contingency constituted a threat to the receivership estate and to the customer creditors of Tilney & Company. The seriousness of this contingent liability was acknowledged by Frederick Tilney (DJA 341-342). The receivers proposed settlement for the sum of $20,000.00 with the withdrawal of a proposed counterclaim by Governmental Statistical Corporation (hereinafter referred to as "GSC"), a Tilney controlled corporation, for advisory services rendered to the City of Nome. Frederick Tilney resisted this proposal, staunchly maintaining that the value of the counterclaim far outweighed any potential liability (DJA 138-152; 399). Mr. Tilney's unrealistic attitude caused the administrators much additional work and expense but the settlement was ultimately approved by the court after a hearing (DJA 167-168).

Claim Against D. Raymond Kenney & Co.

The records of Tilney & Company revealed that the firm had a claim against D. Raymond Kenney & Co. arising from several joint ventures and that Tilney & Company had been unable to obtain satisfaction thereof. The receivers' attorneys started suit in Supreme Court, State of New York, New York County, and obtained summary judgment against said defendant for $107,815.49, plus interest (DJA 443). Subsequent investigation disclosed that the net worth of D. Raymond Kenney was approximately $35,000.00

and that for the most part, the judgment was uncollectible (DJA 129-131). Receivers' attorneys, however, managed to negotiate a cash settlement of the judgment for $85,000.00. The funds were to be loaned to Kenney by his wife's employer (DJA 128). Mr. Tilney objected to the settlement insisting that Mr. Kenney was entitled to a tax refund on his 1965 tax return which would enable him (Kenney) to pay the judgment in full (DJA 136-137). Typical of what the administrators had to face over the years was a tax memorandum prepared by Mr. Tilney and submitted to the court by his counsel at the hearing on the Kenney settlement. As the record indicates, Mr. Tilney cajoled his attorneys into submitting the document without adequate review (DJA 132-133).

Again, Mr. Tilney's obstreperousness necessitated many hours of work by the administrators, but the settlement was, fortunately for the estate, approved by the court. Thus, the receivers transformed a claim upon which for years Mr. Tilney had been unable to realize anything, to $85,000.00 in cash gain to the estate, despite Mr. Tilney's unrealistic attitude (DJA 154).

Sale of Alaska Realty

In order to protect the estate, the receivers arranged to purchase certain real estate which had been partially owned by Mr. Tilney and was located outside of

Anchorage, Alaska, at a foreclosure sale for approximately $14,000.00. After obtaining title to the property, Receiver Hogan sought to sell same for the best price obtainable and found a buyer willing to purchase the property for $32,000.00 in cash (DJA 344-346). Receiver's counsel then moved for a private sale pursuant to section 2001(b) U.S.C. The sale was opposed by Mr. Tilney on the ground that the property was worth $45,000.00 and that it should be transferred to his wife in exchange for part of her claim against the estate (DJA 375-377). The three court-appointed appraisers valued the property at $30,000.00, $26,000.00 and $14,800.00 and the sale was approved by the court resulting in a net cash gain to the estate of more than $12,000.00 (DJA 562-565).

Claims of the Tilney Children

Frederick Tilney contended that his three infant children were creditors of the estate in the total amount of $145,360.68 (DJA 847), due to certain promissory notes, bank accounts and securities allegedly owed by him to his children. The District Court appointed Arnold Bauman (later a Judge of said court) as guardian ad litem for the children. Mr. Bauman filed new proofs of claim on behalf of his wards, but the receiver, after investigation and extensive research, was successful in showing that almost all of the claims should be expunged

(DJA 633-645). Thus, the receivers and counsel were instrumental in saving the receivership estate the sum of approximately $139,000.00, the amount of the expunged claims (DJA 848).

Claims by Other Tilney Interests

Additional proofs of claim were filed against the estate by the following Tilney interests (excluding certain duplications involving claims of the Tilney children):

1.	Frederick Tilney, as executor of the estate of Camilla H. Tilney against Tilney & Company	$ 680.00
2.	Dorothy M. Tilney against Tilney & Company	2,040.00
3.	Dorothy M. Tilney against Tilney & Company	1,550.00
4.	Dorothy M. Tilney against Tilney & Company	19,053.99
5.	Dorothy M. Tilney against Tilney & Company	11,252.00
6.	Tilney & Company, Inc. against Tilney & Company	16,284.72
7.	Dorothy M. Tilney against Tilney & Company	2,500.00
8.	Dorothy M. Tilney against Frederick Tilney	126,050.00
	Total	$179,410.71

After taking oral deposition of the parties and after several hearings, the receivers and their attorneys were able to show that there was insufficient documentary

evidence to support the claim of Dorothy M. Tilney or the claims of the estate of Camilla H. Tilney and that Tilney & Company, Inc. failed to demonstrate any right to assert its claim against Tilney & Company (DJA 646-657). Accordingly, these claims were expunged and the estate was relieved from the potential liability of $179,410.71 (DJA 848-849).

The testimony involving the claim of Tilney & Company, Inc. affords an opportunity to view the Tilney Ball at its blustering best. Although we do not have the space to discuss it here, the Court is respectfully referred to the incredible testimony of Mr. Tilney and his confederate, Brooke Postley (DJA 522-540 ; 543-546; 549-558). As the District Court observed, there were indeed "very sharp conflicts of testimony under oath" (DJA 559).

Claim of Tinker National Bank

The most substantial unsecured creditor of the estate was Tinker National Bank (later Marine Midland Tinker National Bank) which filed a claim for $98,000.00 plus interest due to overdrafts. The receivers and counsel devised a plan for satisfaction of this claim without depleting the cash assets of the estate. The settlement was necessarily complicated by the fact that the receivers could not, by law, extend a preference which would be prejudicial to the

rights of the other creditors. Lengthy negotiations resulted in the satisfaction of the claim upon the acceptance by the bank of a mortgage on certain real property located in East Norwich, New York, which land was held by Frederick Tilney as nominee for the Tilney Construction Corporation, Inc. (sic), a Tilney family entity, and which property was not an asset of the receivership estate. In addition, the estate was paid $5,500.00 by the bank as a further consideration for the mortgage (DJA 850-851). This arrangement was approved by the court (DJA 566-569) and the liability of the estate was reduced by more than $100,000.00 and the cash position improved by $5,500.00.

Obligations of Governmental Statistical Corporation to Tilney & Company

Examination of the books and records of Tilney & Company revealed that the firm was owed more than $600,000.00 by the aforementioned GSC. The liability was evidenced by various promissory notes and by other certificates of indebtedness. Investigation of the assets and liabilities of GSC indicated that although the corporation was insolvent, it did have title to assets which could be liquidated in partial satisfaction of its liability to Tilney & Company. Frederick Tilney, as president of GSC, however, refused to liquidate or turn over any assets in partial satisfaction. Receiver Hogan and counsel were therefore obliged to commence

suit and brought an action in Supreme Court, State of New York, New York County. Faced with a motion for summary judgment, Mr. Tilney, as president of GSC, executed a confession of judgment on September 6, 1969, in the amount of $610,156.25 plus interest and costs (DJA 859). Execution was filed with the Sheriff of Nassau County, New York - the District Court acknowledged that the administrators had no choice but to so execute (DJA 632) - and after service of information subpoenas and restraining notices, the receiver was successful in obtaining approximately $3,500.00 which represented the balance of the proceeds of a condemnation award owing to GSC from the State of New York (DJA 404). Execution was also filed with respect to two parcels of real property owned by GSC at Hicksville, New York. On the day prior to the date set for the sheriff's sale (which was December 29, 1971), the receiver and the Sheriff of Nassau County were served with an order to show cause and temporary restraining order enjoining the sale (DJA 859 - 860). These orders were signed by a justice of the Supreme Court of Nassau County upon application of Mr. Tilney's attorneys. A stay of the sale was granted on January 29, 1972, over the receiver's opposition; however, said stay was vacated by motion of the receiver by an order dated June 3, 1972. Receiver Hogan again scheduled the sale and it was finally held on September 22, 1972. The two parcels attracted

a high bid of $36,100.00 which the receiver believed to be less than an adequate price and, in order to protect the estate, the receiver bid in the property for $37,000.00 by off-setting his judgment against GSC by that amount (DJA 860). Thus, the receiver was forced into substantial litigation solely because of the lack of cooperation of Frederick Tilney.

This real property is still an asset of the receivership estate. Although after bidding in the property the receiver attempted to find buyers for the property, he was unable to attract any meaningful offers. The larger one of the two parcels, it should be pointed out, is adjacent to another parcel owned by the aforementioned Tilney Construction Corp., Inc. which is not subject to the receivership (DJA 611-613). Needless to say, Mr. Tilney was unwilling to structure a package in which the adjacent parcels could be sold as a unit, thereby increasing their attraction for a developer.

Long Island National Bank Matter

Examination of the books and records of the defendants herein revealed that GSC had borrowed $62,000.00 from Long Island National Bank. As a part of the loan transaction, Tilney & Company and Frederick Tilney had pledged and delivered to said bank certain assets as security for the loan. The defendants also guaranteed

the payment of the loan to the bank (DJA 1223 - 1224). Receiver Hogan decided that the loan should be liquidated because:

1. As long as the loan remained unpaid, the estate was potentially liable to the bank under the guarantees for any deficiency in the payment of the loan, should the collateral pledged become insufficient to fully cover the amount of the loan; and

2. At the time, there were assets valued at more than $65,000.00 belonging to Tilney & Company and Frederick Tilney which would become part of the estate when delivered by the bank.

Mr. Hogan attempted to negotiate the release of the excess collateral held by Long Island National Bank, but the bank, acting on Frederick Tilney's instructions (or at least in compliance with his express desires), refused to do so and, in fact, continued to renew the loan every six months (DJA 1224-1225). Accordingly, the receiver was compelled to institute a special proceeding against Long Island National Bank for the turn-over of the excess collateral in Supreme Court, State of New York, Nassau County. After numerous court appearances (many of which were necessitated by the delaying tactics of Tilney's attorneys), the receiver discontinued the proceedings, without prejudice, when an offer to purchase the largest item of collateral,

a note of the Alaska State Development Corporation, was withdrawn by said corporation after several extensions. The receiver subsequently moved in the court below for an order directing the bank to turn over the excess collateral, and this application resulted in a stipulation of settlement whereby certain assets were liquidated and the receivership obtained $37,000.00(approx.) in cash (DJA 1247-1249).

Again, complex legal proceedings extending over several years in two courts were required in order to obtain a disposition which could have been realized at the outset with the cooperation of Frederick Tilney.

Additional Time and Effort Necessitated By the Actions of Frederick Tilney

No sooner had the receivers succeeded in resolving several of the major problems facing them and gained some "breathing room" for the estate, than Mr. Tilney attempted to wrest control of the receivership from the receivers and the court. We have already pointed out his objections to the City of Nome and D. Raymond Kenney settlements, the sale of the Alaska property, and his interposing claims on behalf of members of his family and Tilney controlled corporations, as well as the extensive litigation required due to his maneuverings over the GSC debt and realty and the Long Island National Bank collateral. It should also be pointed out that Mr. Tilney had been warned repeatedly

by the court to stop interfering with the activities of the receivers (DJA 609 - 611). To circumvent this, Dorothy M. Tilney, his wife, and one Bartley DeBuona, his neighborhood grocer, formed a "Creditors' Committee" (consisting only of Tilney confederates), the sole purpose of which seemed to be harassment of the administrators by agitating the customer creditors of Tilney & Company against the receivers and the court and urging them to write to their congressmen and senators complaining about the receivers' "delay" in making distribution. Another ploy to circumvent the prohibition was for Frederick Tilney to send correspondence under Mrs. Tilney's name or "through the courtesy of (his counsel)", when his attorneys, in fact, had no connection with, or knowledge of, the transmitted material (DJA 711-719). Mr. Tilney's attorneys, in fact, apologized to the court for their inability to control their client and stated that in many instances he refused to take their advice (DJA 603). The following discussion will attempt to show Mr. Tilney's strategy in adopting these and other obstructive tactics:

All of Frederick Tilney's machinations seemed to have been directed toward:

1. Delaying liquidation in the hope that the market value of his assets would increase;

2. Undermining the efforts of the receivers in order to distract attention from his responsibilities for

the collapse of Tilney & Company and from his guilt on the criminal charges filed against him; and

3. Opposing liquidation of assets in order to reduce the amount of cash available, thereby attempting to reduce potential administrative allowances.

It is submitted that as soon as it became apparent to Frederick Tilney that the receivers had protected the assets of the estate to the point where there would be a remainder eventually returned to him, he fanatically turned his efforts toward ending liquidation (DJA 159A-163) and reducing potential administrative allowances. As the record will reveal, Tilney's anticipation and concern as to the allowances was premature. Defendants' brief admits that Mr. Tilney's campaign in this respect began in mid-1969 (pp. 6-7, Defendants' brief). Frederick Tilney's bullying, in fact, caused the SEC to demand the filing of applications for interim allowances not because of hardship of the administrators (which would have been a valid reason), but apparently to fix the fees to the date of the applications. After the voluminous applications were prepared and filed, the SEC said it had undertaken a "change of policy" and that it was then opposed to any interim allowances (DJA 598-599). This farce required not only the expenditure of many hours of valuable time on the part of the administrators but also interrupted and necessarily delayed the completion of important aspects of the estate which were

taking place at the same time. It is clear that the SEC would not have requested the filing of interim allowances had it not been for Mr. Tilney's insistance (DJA 602). Mr. Tilney, then, must accept the responsibility for the ensuing delay.

Having failed in his premature attempt to fix administrative allowances, Mr. Tilney (all the while continuing his resistance to liquidation with respect to property such as the Alaska real property, the assets of GSC, and the collateral held by Long Island National Bank) attempted to bring the receivership to a close before the creditors had been paid. On December 24, 1970, the defendants moved to terminate the receivership and restrain further liquidation of assets. Defendants brazenly asked for this relief despite the fact that they knew the receiver held only $69,000.00 in liquid assets over and above the amounts earmarked for creditors (but less than half that amount would have been available if interest were awarded to creditors - which it was) (DJA 667-672). Incredibly, the SEC vacillated once again and asked for submission of applications for fees so that the fees could be fixed (DJA 674). Chief Judge Edelstein, however, recognized the motion for what it was: "...a facade for a determination of fees." (DJA 675) Defendants advised the court that they would undertake promptly to obtain a bond to secure payment of the administration expenses against

the event their motion were granted and the assets of the estate proved to be inadequate (DJA 697). On April 20, 1971, however, defendants wrote to the court advising it of the failure of their efforts to obtain a bond (DJA 697 - 698). For this, and other reasons, the motion was denied (DJA 696-698).

Affidavits and Other Material Prepared by Frederick Tilney

A considerable portion of the administrators' time was spent in reviewing hundreds of letters and many tome-like reports prepared by Frederick Tilney and in reviewing and responding to his many affidavits (DJA 487-488). In fact, one major problem throughout this receivership was that defendants' counsel acquiesced in the practice of submitting affidavits prepared by Frederick Tilney, without their supervision and sometimes without even reading them. (See above, p. 14; also DJA 1029-1031). To their credit, however, defendants' attorneys in the court below refused to offer certain Tilney affidavits (at least on one occasion) where they could not do so "in good conscience" (DJA 692-693). The bulk of all other Tilney affidavits and those of some "creditors" were prepared by Frederick Tilney himself, a fact which may be proved by the record. The Court may take judicial notice of the number of affidavits which were prepared on one typewriter - the very typewriter used in the preparation of Tilney letters

and reports which are annexed as exhibits to many of the affidavits. The administrators, then, were obliged to respond not only to the carefully prepared arguments submitted by defendants' counsel, but to Mr. Tilney's outrageous statements and amateurish memoranda.

Dealings with Creditors and Customers

The court had been advised by the SEC that the customers of Tilney & Company had been ignored for many months prior to the inception of the receivership (DJA 21). Upon their examination of the Tilney & Company files, the receivers confirmed this, and discovered numerous complaints and threatening letters written by the customers (DJA 431). The receivers and counsel thereupon prepared a preliminary notice to creditors dated February 26, 1968, and sent it to all known customers of the Tilney firm and to all known trade creditors of Tilney & Company and Frederick Tilney (DJA 431). The notice indicated that a report containing information as to the financial condition of the receivership estate was to be prepared and similarly circulated, together with forms for the filing of proofs of claim. The report, a seven-page "Report to the Customers and Possible Creditors of Tilney & Company and Frederick Tilney" (DJA 107-119) was dated October 31, 1968 and, together with three pages of financial information, was mailed with the proof of claim

forms to all known creditors in late 1968. The receivers and counsel then prepared a newspaper advertisement giving additional notice to all creditors and customers of Tilney & Company or Frederick Tilney that proof of claim forms were available upon request. The advertisement was published in the Wall Street Journal, New York Times, Newsday and the Anchorage Times on February 21, 1969 (DJA 432). The administrators also communicated with many creditors on an individual basis by correspondence or telephone whenever the situation warranted it, e. g., upon inquiry or when a problem or question arose. (DJA 432 ; 859 ; 398)

Moreover, claimants whose claims were subject to judicial determination also received copies of all motion papers affecting their respective claims (DJA 772 - 791 ; 837 - 844).

The administrators also expended considerable effort in tracing missing claimants. One problem was that many Tilney & Company customers were military personnel and were subject to frequent transfer. Although all claimants were cautioned to keep the receivers advised of any change of address, some did not do so. The administrators made inquiries to military locator services and to the Army Times and the Air Force Times.

Although defendants' brief implies that the SEC's Regional Administrator for Alaska criticized the court's handling of the receivership in such manner as to cause a delay in payments to creditors, that is clearly not the case. The letter quoted on page 11 of said brief was written by a member of the Regional Administrator's staff and said letter was later apologetically clarified by the Administrator himself:

> "Indeed, the letter sought to inform a claimant that a receivership as complex and problem-ridden as is the Tilney matter is not easily wound up.
> ...
> "Any critical overtones should be attributed solely to unfortunate draftsmanship".

(DJA 744).

The proofs of claim, as filed, were carefully scrutinized by the receivers, the accountants and the attorneys, and in many cases variations and discrepancies had to be rectified. In some cases, the stocks which were to have been purchased by Tilney & Company, but were not so purchased, had risen dramatically in price since the "confirmation date", and the claimants refused to settle for the return of the purchase price even if it included interest. The receiver was able to persuade almost all of these claimants to accept the purchase price by submitting new proofs of claim, thereby saving the valuable time of the court. Among the claims of customers of Tilney & Company, only one (Lanzaro) had to be formally reduced by

the District Court (DJA 804 - 805).

The claims were reviewed by the court and, after approval, all claimants were paid 100% of the amount approved. Customer creditors of Tilney & Company were also paid 6% interest from the inception of the receivership to the date of the order directing distribution. (The claims were paid under orders dated May 24, 1971, (DJA 699-710) providing for an initial 65% pay-out, while the balance, 35%, was provided for in orders dated October 15, 1971 (DJA 796-817) and April 18, 1972 (DJA 1018-1020). Interest was awarded in an order dated December 21, 1972 (DJA 1244)).

Receiver's Expenditures on Behalf of the Tilney Family

During the course of this receivership, Mr. Tilney has continued to reside with his family on his 5-1/4 acre estate, "Sundown", at exclusive Centre Island, Oyster Bay, New York. As of March 31, 1973, the receiver had paid a total of $65,557.00 for such items as Mr. Tilney's personal mortgage payments, life insurance premiums, real estate taxes, water charges, fuel oil, and homeowners insurance premiums, all on behalf of Mr. Tilney and his family (DJA 1279). Moreover, Mr. Tilney has admittedly been involved in several business enterprises throughout the receivership, e. g., Governmental Statistical Corporation (DJA 631 ; 917 - 919); the redundant Tilney Construction Corporation, Inc. (which,

as mentioned above, owns real property in Hicksville, New York) and the aforementioned claimant, Tilney & Company, Inc. If Mr. Tilney's business activities were not profitable, it was certainly no fault of the receiver. He had no right to expect the receivership estate to support him in antebellum luxury at "Sundown", while he dabbled at unsuccessful ventures for seven years and spent most of his time harassing the administrators. In view of the receivers' expenditure of more than $65,000.00 on behalf of the Tilneys, there is no reason why the family could not have lived quite comfortably if only Mr. Tilney would have taken a job paying a modest salary.

Resignation of Receiver Harris (The Waddington Matter)

As indicated above, Mr. Harris is represented by separate counsel on this appeal and it is understood that his attorneys will respond specifically to defendants' allegations in connection with the sale of the Waddington Bank stock. This brief, then, will not attempt to treat the said transaction in detail. It should be pointed out, however, that the record clearly substantiates:

1. That the stock was sold for the best price obtainable; and

2. That Mr. Harris' claim that Mr. Tilney was fully aware that the purchaser of the stock had been an old classmate of Mr. Harris was not denied by Mr. Tilney (DJA 462).

It should be noted that defendants' brief does not allege that Mr. Tilney did not have knowledge of the relationship.

It is submitted that Mr. Tilney's protestations with regard to the Waddington transaction were, and are, merely another attempt to reduce the receivers' allowances. During the heat of the dispute involving the sale, however, Mr. Harris submitted his resignation, effective July 16, 1969 (**DJA 296 - 297**).

Defendants' Motion for
Substitution of Attorneys

The well known law firm of Cadwalader, Wickersham and Taft represented defendants for at least several years prior to the inception of the receivership and throughout the proceedings in the Court below. (**DJA 689**) In March, 1973, however, defendants moved to substitute the firm of Saxe, Bacon & Bolan as their counsel (said firm is now known as Saxe, Bacon, Bolan & Manley and represents defendants on this appeal). The only reason shown was an alleged "difference of opinion" between Frederick Tilney and his attorneys, apparently over a claim of surcharge that Mr. Tilney insisted on filing against the receivers (**DJA 907**).

Receiver Hogan objected to the substitution on the grounds that Saxe, Bacon & Bolan admitted to representing Dorothy M. Tilney, Bartley De Buona and one A. Mirabito, creditors of the estate (DJA 910-911; 920) and also represented GSC; and that a conflict of interest would be created by such substitution. To counter these charges, Saxe, Bacon & Bolan submitted releases of the creditors conditioned on said firm's substitution (DJA 921-924). However, since defendants' motion was made between the time the turnover proceeding against Long Island National Bank was withdrawn in State Court and a motion for turnover of the same GSC assets was made in Federal Court by receiver Hogan (above, p. 22), it was pointed out that if the substitution were granted, Saxe, Bacon, Bolan would find itself as attorney for a creditor (Tilney & Company) and for a debtor (GSC).

After a hearing, the court denied the motion, finding "that the defendants have not shown satisfactory reasons to allow the requested substitution." (DJA 1021). It is important to note that the administrators did not object to a substitution in general, but to the substitution of a particular law firm. Likewise, the court denied the substitution of Saxe, Bacon &

Bolan, but left the door open for defendants to secure other counsel. They did not do so.

The Allowances

As pointed out above, the applications for interim allowances of Mr. Hogan (DJA 394-409*), the attorneys (DJA 348-374*) and the accountants (DJA 386-393*) and Mr. Harris' report and petition for allowances (DJA 415-521) wound up in judicial limbo after the SEC's change of policy. Later, when the distribution to creditors was almost complete, receiver Hogan, his accountants and his attorneys filed supplemental applications for allowances. The applications covered work performed after the periods covered by applications for interim allowances, i. e., to December 30, 1971 in the case of Mr. Hogan, (DJA 868-896) to December 31, 1971 in the case of the attorneys, (DJA 845-867*) and to January 31, 1972 in the case of the accountants (DJA 897-904*). Mr. Harris' report and petition had claimed for services performed to February 18, 1970.

At the District Court's request, the SEC offered its recommendations which were considerably lower than the amounts applied for. (DJA 1119-1133). The administrators pointed out certain misconceptions, baseless assumptions and erroneous conclusions relied upon by the SEC. For example,

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* Except in the cases of the Harris Report of May 1, 1970 and the Hogan Application of February 29, 1972, extracts of time records have not been included in the Deferred Joint Appendix.

it was shown that the amounts recommended were based on the assumption that the assets were insufficient for payment of interest (there were such sufficient assets, and interest was in fact paid); it was also shown that the cases relied upon by the SEC were clearly distinguishable because the instant estate was solvent; it was further pointed out that the SEC had arbitrarily assumed that there was substantial duplication of effort on the part of the administrators (DJA 1134-1138). The Commission thereupon revised its recommendation and increased the amounts therein by about 10% per administrator. This increase obviously had nothing to do with the mechanics of paying the interest (as the defendants would have this Court believe; see p. 43 - defendants' brief) but was due to a realization that if the investor-creditors were to be paid in full, with interest, the amount of the allowances would not affect public investors (DJA 928-929). By opinion dated October 19, 1972 (DJA 1190-1204) and order dated December 21, 1972 (DJA 1243-1246), the court awarded fees and allowances which were just slightly higher than the SEC recommendations, but which were still far less than the amounts requested: (It should be noted that the following schedule does not include reimbursements for out-of-pocket expenses or for an allowance to defendants' accountants, Louis D. Blum & Co.)

	Amount Claimed	Final SEC Recommendation	Amount Awarded
Hogan	$65,791	$39,600	$43,560
Harris	57,500	23,500	23,800
Attorneys	96,935	50,600	55,660
Accountants	89,189	55,957	61,552

The receiver's attorneys prepared the final order embodying the provisions of the decision so that there would be a separate document within the meaning of Rule 58, Federal Rules of Civil Procedure, and a final appealable order. The order was entered December 21, 1972, and no appeal was taken therefrom within 60 days.

Hertz, Herson & Co. filed an additional application for allowances dated October 2, 1973 (DJA 1331-1334*) but said application was denied by the court in an order entered March 20, 1974 (DJA 1343-1344 ; 1403).

The Surcharge Claim

The surcharge allegations are to be found in Affidavits of Frederick Tilney dated April 17, 1972 (DJA 931-942 ; 943-1017) and September 21, 1973 (DJA 1296 - 1303). They are baseless and absolutely without merit. The charges have been responded to on the record (DJA 1040-1059; 1181-1183; 1184-1189; 1304-1308) and need not be the subject of extensive discussion here. Defendants' insistence that the surcharge claims were not considered by the court below are unfounded. Tilney's affidavits are part of the record, as are the affidavits in response thereto.

* See footnote, p. 35

The Accounting

On September 11, 1973, the receivers filed their final report and joint account covering the period from December 18, 1967 through July 16, 1969 and receiver Hogan filed his account as sole receiver covering the period from July 16, 1969 through March 31, 1973, as brought down to the date of July 31, 1973 (DJA 1259-1295). A hearing on the account was held on October 2, 1973. At the hearing, defendants' counsel stated,

> "MR. GILHEANVY (sic): Your Honor, the defendants have no objections to any particular detail of the final accounting. I think it is a matter of arithmetic, it is a matter of numbers, we have no objection to that." (DJA 1321)

Upon questioning by the court, Mr. Tilney responded as follows:

> "THE COURT: But you have no objection to the approval of this final accounting, is that correct?
>
> MR. TILNEY: I do not, your Honor. The final accounting is acceptable to me and as it is to my attorneys." (DJA 1325)

Mr. Tilney and his attorneys, however, qualified their statements by attempting to retain for Mr. Tilney a right to proceed with a surcharge application pro se. (DJA 1322-1324). Receiver's counsel urged that based on the administrators' and the court's past experience in dealing with Frederick Tilney, permission to proceed in this manner be denied but that if it were granted, Frederick Tilney be required to post bond sufficient

to cover the costs and expenses of the administrators in defending the surcharge (DJA 1325-1330). By an order entered March 20, 1974 (DJA 1402-1404)(based on an opinion dated February 21, 1974 (DJA 1335-1346)), the court, in pertinent part:

1. Approved the final account;

2. Denied the application of Frederick Tilney to proceed pro se in the matter of a surcharge;

3. Set a 30-day bar date against United States Internal Revenue Service;

4. Ordered that the remaining assets be returned to the defendants upon the expiration of the aforesaid bar date; and

5. Released and discharged the receiver and former co-receiver, effective upon their compliance with the terms of the order.

After entry of the aforesaid order, the administrators prepared to turn over the remaining assets of the estate to the defendants. It became apparent, however, that Frederick Tilney was jockeying to regain control of the estate's property, and then appeal the very order which returned those assets (DJA 1406). Mr. Tilney felt that he would be able to do this because the bar date was 30 days and the Federal Rules provide 60 days for all parties to appeal where an agency of the United States Government (here the SEC) is a party. (Rule 4(a)

Federal Rules of Appellate Procedure)

Faced with Mr. Tilney's insistence, receiver Hogan found himself in the anomalous position of being a "prevailing party" who was being called upon to turn over property to an announced appellant (DJA 1406). Accordingly, the receiver moved the court for a stay of the turn-over provisions of the order filed March 20, 1974, pending appeal. This motion was heard on April 19, 1974. Receiver's counsel stated to the court that the receiver, as a fiduciary, was entitled to reasonable expenses, including counsel fees, on successful defense of an appeal of his account and that the assets should not be released unless bond was posted covering the costs of the appeal including attorneys' fees (DJA 1409-1412). Defendants' counsel suggested that a bond of $10,000.00 would be sufficient for these purposes (DJA 1413), but the court implied that such an amount was unrealistic:

> "THE COURT: What is the basis for your computation that $10,000.00 would be sufficient?
>
> MR. WIENER: Because, having handled appeals, I think that it is a sufficient amount to cover any expenses that he would incur.
>
> THE COURT: Would it embarrass you if I asked you how much your firm charges per hour?
>
> MR. WIENER: Sir, I really am not competent to say that.
>
> THE COURT: Well, I am."

(DJA 1416)

The court then ruled as follows:

"THE COURT: My second ruling is that the turnover of the assets of this estate are stayed pending all appeals and the disposition thereof. However, in the event an agreement is reached between the parties as to an appropriate and sufficient undertaking, this Court will then consider amending its order just stated.

The figure that I would think that you might discuss and use for purpose of your negotiation is the figure of $150,000, that apparently being the knockdown value of the assets.

MR. WIENER: Your Honor, excuse me, if I may, if we do reach agreement on the figure, of course we are going to need release of the assets before we can obtain the bond. If agreement is reached between counsel as to the fact that a bond will be obtained in an agreed amount, will your Honor consent to allowing the property to be released immediately?

THE COURT: I will consent to nothing in advance. If you reach an agreement, you can apply to me on Monday."

(DJA 1417-1418)

As pointed out in the Preliminary Statement to this brief, defendants did not even attempt to reach agreement, but proceeded directly to this Court where bond was fixed in the amount of $25,000.00. The Court is respectfully referred to the subdivision of this brief entitled "Prior Proceedings in this Court" where the present status of the bond and remaining assets is presented in detail.

ARGUMENT

POINT I

ALL SALES OF RECEIVERSHIP ASSETS WERE CONDUCTED IN ACCORDANCE WITH TITLE 28 U.S.C. SECTIONS 2001 AND 2004

Of the numerous sales of receivership assets conducted by the receivers, only one transaction involved the sale of realty (the Alaska property described above, at page 15). All other sales were of securities, i.e., stocks, bonds and notes, held in the estate. Defendants concede that the Alaska parcel was sold in compliance with Title 28 U.S.C. section 2001(b) (referred to below) and have challenged the procedures established by the court and followed by the receivers in liquidating the securities (p. 36, defendants' brief).

Title 28 U.S.C. section 2004 dealing with the "Sale of personalty generally," provides, in pertinent part: "Any personalty sold under any order or decree of any court of the United States shall be sold in accordance with Section 2001 of this Title, unless the court orders otherwise." (emphasis supplied.)

Section 2001, which is incorporated by reference in section 2004, deals with the "Sale of realty generally" and sets forth the procedures under which all real property (with certain enumerated exceptions) must

be sold. The statute provides that real property may be sold either (a) under a court supervised public sale; or (b) by private sale, if ordered by the court after hearing, appraisals, and other procedural requirements. (The Alaska parcel was sold through such private sale.)

By the consent judgment of December 18, 1967, the receivers were "authorized, empowered and directed to have full power to marshal (the assets and property of the defendants), prosecute all claims, choses-in-action and suits in equity on behalf of said defendants, to collect and take charge of all and singular thereof and to liquidate the estate of said defendants in order to pay all just claims and all creditors of said defendants." (DJA 27) This language clearly indicates that it was the court's intention to authorize the receivers to sell securities owned by the receivership estate otherwise than under section 2001. The court was well aware that broad powers of liquidation were essential in order to avoid a cumbersome public auction (as would be required under section 2001(a)), or a time consuming private sale (under section 2001(b)), each time a block of the securities owned by the estate were to be disposed of by the receivers.

It is fundamental to the proper liquidation of an estate of this nature, that a receiver be granted the

power to act in a timely manner and be authorized to dispose of such securities through the channels normally utilized by responsible sectors of the financial community. The authorization to sell the securities in this manner was, in fact, repeated in the instructions of the court at numerous hearings and was granted with the full knowledge and approval of the SEC. Moreover, Frederick Tilney participated in, approved of, or acquiesced in all sales of securities (see pp. 12-13 above).

In Tanzer v. Huffines, 412 F.2d 221 (3d Cir. 1969), cert. denied 396 U.S. 877 (1969) involving a corporate receivership proceeding, the Third Circuit held that the District Court did not abuse its discretion in entering an order authorizing the receiver to sell controlling stock which the receivership corporation owned in another corporation, without following the statutory procedures contained in section 2001. The court held that the District Court did indeed "order otherwise" pursuant to section 2004 and was justified in so doing.

There is no question, therefore, that all sales of receivership securities were authorized by the aforesaid order of the District Court dated December 18, 1967, and were, accordingly, effected in compliance with the provisions of Title 28 U.S.C. section 2004.

POINT II

THE RIGHT TO SUBSTITUTE ATTORNEYS IS NOT ABSOLUTE, BUT IS CONTINGENT UPON THE ORDER OF THE COURT. SUBSTITUTION IS TO BE GRANTED ONLY UPON A SHOWING OF SUFFICIENT REASON. SUFFICIENT REASON WAS NOT SHOWN IN THIS CASE.

Section 1654 of Title 28 U.S.C. provides:

"In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."

The rules of the court below provide:

"An attorney who has appeared as attorney of record for a party may be relieved or displaced only by order of the Court and may not withdraw from a case without leave of the Court granted by order. Such an order may be granted only upon a showing by affidavit of satisfactory reasons for withdrawal or displacement and the posture of the case, including its position, if any, on the calendar." (Rule 4(c) Gen. Rules, U.S.D.C., S.D.N.Y.)

It is well recognized that the right to substitute attorneys is subject to the discretion of the court. See Butterman v. Walston & Co., 387 F.2d 822 (7th Cir. 1967) cert. denied 391 U.S. 913, (1968), rehearing denied 395 U.S. 942 (1969). (See also City of Hankinson, North Dakota v. Otter Tail Power Co., 294 F. Supp. 249 (D.C.N.D. 1969)).

As shown at pp. 33-35 of this brief, defendants did not show sufficient reason for the requested substitution, and the District Court was correct in denying the application.

POINT III

ALLOWANCES OF COMPENSATION FOR A RECEIVER, HIS ATTORNEYS AND ACCOUNTANTS ARE WITHIN THE SOUND DISCRETION OF THE TRIAL JUDGE. THE COURT BELOW DID NOT ABUSE ITS DISCRETION IN THE ALLOWANCES AWARDED TO RECEIVER HOGAN, HIS ATTORNEYS AND ACCOUNTANTS.

It well recognized that allowances of compensation for a receiver, his attorneys and accountants rest in the sound discretion of the trial judge. Wyant v. U.S. Fidelity and Guaranty Co., 116 F.2d 83 (4th Cir. 1940), cert. denied, Wyant v. Caldwell, 314 U.S. 610 (1941). See also Commodity Credit Corporation v. Bell, 107 F.2d 1001 (5th Cir. 1939), Coskery v. Roberts & Mander Corp., 200 F.2d 150 (3d Cir. 1952).

A. The Allowance for Receiver Hogan

In his application for allowances, Mr. Hogan requested $65,790.80 for his services as receiver. The SEC recommended $39,600.00 and the District Court awarded $43,560.00.

Among the elements which should be considered by the court in fixing a receiver's compensation are the amount of money or property received; the responsibility placed on the receiver and the receiver's attitude toward that responsibility; the amount of time devoted by the receiver to receivership duties; the skill and speed with

which the affairs of the estate are resolved; the compensation given in the same locality for similar services, either in private or official life; and the results obtained. "All of these matters are weighed with reference to the ability of the estate to meet all of the obligations against it and in the light of fairness to all others interested as well as the receiver." (TARDY'S SMITH ON RECEIVERS, VOLUME II, SECTION 621 2d ed.) A review of the pertinent decisions in this area will reveal that these elements are utilized in varying degrees from one case to the next. See United States v. Code Products Corp., 362 F.2d 669 (3d Cir. 1966), United States v. Larchwood Gardens, Inc., 404 F.2d 1108 (3d Cir. 1968), appeal after remand, 420 F.2d. 531. In the recent case, Securities and Exchange Commission v. W. L. Moody & Co. Bank, 374 F. Supp. 465 (S.D. Texas 1974) the court, finding that the estate contained sufficient resources to compensate the receiver and his attorney at commercially acceptable rates, held that it would be unreasonable not to so compensate them.

In order to determine what constitutes adequate compensation under the circumstances of this particular case, it is essential that the facts of this receivership be examined in the light of the above criteria.

Amount Received

The amount of money and other assets received

herein was substantial. Even defendants' brief admits that the receivers collected a total of $1,365,084.00 (defendant's brief p. 2). This is a net amount however, and the amount of the gross assets was substantially higher.

Responsibility

The receivers were charged with claims and lawsuits far in excess of the assets. In terms of numbers, most of these charges represented claims of customer creditors of Tilney & Company and in many cases represented a significant part of the customer's life savings. It was, in fact, for the protection of these very customers that the receivership had been instituted. Both the court and the SEC made it quite clear that the first order of responsibility was to said customers.

Receiver Hogan's attitude toward this responsibility can be demonstrated not only by the fact that the creditors have been paid in full, with interest, but by the fact that even though his fees and allowances were preferred charges against the estate, he did not object to the payment of all allowed creditors' claims prior to payment of his compensation. Mr. Hogan agreed to this payment in order that the funds of members of the general public, who were customers of Tilney & Company and whose funds had been tied up for several years due to Mr. Tilney's actions, might be released.

Time Expended

Mr. Hogan submitted detailed extracts from his time records* which established the fact that as of January 1, 1972, no less than 1,012 hours (DJA 883) were spent in "...the proper performance of the duties imposed by the court..." (United States v. Larchwood Gardens, Inc., supra, 404 F.2d at 1110).

Skill and Speed with which the affairs of the Estate were resolved

By skills developed through many years experience in law, finance and the business world, Mr. Hogan, together with his co-receiver, was able to unravel the complicated financial web woven by Frederick Tilney and marshal the far flung assets owned by the defendants. Liquidation of these assets also required no small degree of sophistication. The stocks owned by the estate, for example, consisted for the most part of infrequently traded issues of small banks located in Alaska and New York State, and the bonds of smaller municipalities. Converting these securities to cash at a fair price required substantial financial acumen. By way of further example, it should be noted that Mr. Hogan participated in the settlement of the $2,000,000.00 lawsuit by the City of Nome and compromised a number of other claims. The result, of course, is that all legitimate creditors have

* See footnote, p. 35

been paid in full, with interest.

Defendants' insinuations that the receivers deliberately caused this proceeding to be drawn out are completely without merit. Any delay has been due solely to the fact that Frederick Tilney himself threw obstacle upon obstacle in the path of the expeditious administration and liquidation of this estate. The court below, in fact, frequently admonished Mr. Tilney to refrain from such improper conduct (**above**, p.24). The first distribution to creditors took place approximately 3-1/2 years after the inception of the receivership (**above** p.31) and full distribution on almost all of the creditors' claims was complete within a few months thereafter (**above**, p.31). This period of time is certainly not out of line with other equity receiverships, particularly in view of the nature of the receivership assets and Mr. Tilney's obstructive tactics.

Compensation for Similar Services

The allowance to Mr. Hogan breaks down to an hourly rate of $43.14 per hour, based on time expended up to December 30, 1971. Granted, that the allowance was to cover work to be performed in winding up the estate, but an inordinate amount of time (which could not have been contemplated by the court below) was required of

Mr. Hogan from December 30, 1971 to the date of the filing of this appeal, April 30, 1974, reducing the effective rate drastically. The Court is urged to take judicial notice of the fact that the rate paid to Mr. Hogan is clearly well below rates at which attorneys or financial executives are compensated in New York City. The rate is also well below rates paid to receivers in similar cases involving solvent estates. The Court is respectfully referred to the detailed discussion of receivers' allowances in Securities and Exchange Commission v. W. L. Moody & Co. Bank, supra, 374 F. Supp. at 480. See also Securities and Exchange Commission v. Charles Plohn & Co., C.C.H. Fed. Sec. Law Rep. Para. 93,045 (S.D.N.Y. 1971) where the receiver was paid at the rate of $100.00 per hour.

Results

The affairs of the defendants were in a most confused, seemingly hopeless tangle at the inception of the receivership. Through the efforts of the receivers, however, all creditors were paid 100 cents on the dollar and the customer creditors received interest on their claims. The purposes for which the receivers were appointed were therefore accomplished.

The Ability of the Estate
to Meet its Obligations

There was no question at the time the allowances were made that the estate could meet its obligations. As pointed out above, substantial assets remain to be transferred to the defendants.

B. The Allowance to Wagner, Quillinan & Tennant, Attorneys

The firm of Wagner, Quillinan & Tennant, counsel to the receivers, requested fees of $96,935.00 for services rendered. The SEC recommended $50,600.00 and the District Court awarded $55,660.00.

In Guaranty Trust Co. v. Seaboard Air Line Ry., 68 F. Supp. 304 (E.D.Va. 1946) the court said at 310:

> "There are many factors entering into the determination of reasonable counsel fees when they must be fixed by the court. Integrity, capacity and industry of counsel are to be presumed, unless there is evidence to the contrary. Assuming the existence of these, probably the most important factors are (1) the nature, importance and responsibility of the duties performed; (2) the amount of professional time necessarily required for the services and (3) the result obtained."

In applying these criteria to the instant case, the following observations may be made:

Nature, Importance and Responsibility of the Duties Performed

The statement of facts set forth in this brief will serve to illustrate the various duties performed by counsel to the receivers. The applications for allowances of the attorneys dated February 12, 1970 and February 29, 1972, (DJA 348-374; 845-867*) clearly set forth in detail many of the legal services rendered by them at the request of the receivers. The applications establish the "nature, importance and responsibility of the duties performed" by the attorneys.

Time Necessarily Required

Annexed to the aforesaid applications for allowances are detailed extracts of the time records of members and associates of the firm of Wagner, Quillinan & Tennant pertaining to this case* In order to successfully gather together the assets of the defendants herein, liquidate said assets and make payment to creditors, the attorneys to the receivers necessarily spent more than 1,601 hours of working time (not including 6-1/2 days spent in Anchorage, Alaska exclusively on receivership business).

The award to the attorneys breaks down to an average of less than $35.00 per hour (not including the

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* See footnote, p. 35

Alaska time) and, as in the case of Receiver Hogan, the rate is based on time expended as of December 31, 1971. Between that date and the date of the filing of the Notice of Appeal herein (April 30,1974) the attorneys expended an additional 596 (approximate) hours in winding up the estate, meaning an effective rate of about $25.00 (Affidavit of Robert F. Mulligan dated May 6, 1974, filed in opposition to motion filed in this Court April 30, 1974).

Result Obtained

The unqualified success of this receivership has been mentioned in connection with Mr. Hogan's allowances, and the Court is referred to the arguments presented thereunder. Since the duties of the attorneys to the receivers were so closely interwoven with the work of the receivers, the results accomplished are essentially the same.

The Court is also referred to the criteria set forth by Judge Noel in Securities and Exchange Commission v. W. L. Moody & Co. Bank, supra, 374 F. Supp. at 484. The attorneys in that receivership were compensated at a rate of over $75.00 per hour. In Securities and Exchange Commission v. Charles Plohn & Co. (supra) the attorneys asked for compensation at a "mix rate" (partners and associates) of $48.66. The court awarded that rate

calling it "modest" and hinted that a $75.00 per hour mix rate would more commonly be charged. In Securities and Exchange Commission v. Fifth Avenue Coach Lines, Inc., 364 F. Supp. 1220 (S.D.N.Y. 1973), an attorneys' mix rate of a nearly identical amount, $48.56, was held fair and reasonable.

C. The Allowance to Hertz, Herson & Co., Accountants

Hertz, Herson & Co., successor to B. Bernard Greidinger & Co., accountants to the receivers, applied for $89,180.00 in allowances. The SEC recommended $55,957.00 and the court below awarded $61,552.00. (The accountants later applied for an additional $12,526.00 for work entailed in winding up the receivership (DJA 1331-1334) but this application was denied by the court (DJA 1343-1344; 1403).

A detailed statement of the duties performed by the accountants may be found in their applications for compensation (see also page 35, above). Briefly, the accountants investigated and audited the affairs and records of the defendants, as well as the defendants' affiliated companies; processed, reconciled and accounted for creditors' claims and distributions in payment thereof; prepared numerous reports and financial statements; attended numerous hearings and conferences; prepared all

of the complex tax returns required throughout this receivership; and prepared the final accounting of the receivers.

As of January 31, 1972, the accountants had spent a total of 2,484 hours on receivership affairs. The breakdown of this total into various categories is set forth in the applications (DJA 386-393; 897-904*). During the period from February 1, 1972 through September 30, 1973 (the period covered by the application for additional allowances which was denied (**above, p.55**)), the accountants expended an additional 344 hours (DJA 1332*). The Court will note that even ignoring the breakdown of time into the various categories of personnel of Hertz, Herson & Co., the average hourly rate based upon time expended to January 31, 1972 is $24.78. When the additional 344 hours of work from February 1, 1972 through September 30, 1973 is considered, the effective average rate is reduced to $21.77 per hour.

In Securities and Exchange Commission v. Charles Plohn & Co., supra, the court awarded the receivers' accountants an average hourly rate of $22.85 where the breakdown disclosed a much lower proportion of partners' and supervisory time than in the instant case. Moreover, in Securities and Exchange Commission v. W. L. Moody & Co. Bank, supra, 374 F. Supp. at p. 494, the court authorized

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* See footnote, p. 35

payment to the accountants before they submitted their invoice, and apparently at their normal hourly rates.

It is clear that the court below did not abuse its discretion in awarding the aforementioned allowances to Receiver Hogan, to Wagner, Quillinan & Tennant and to Hertz, Herson & Co. If there is anything remarkable about the allowances, it is the modest amounts involved in view of the amount of time and effort expended by the administrators of the estate.

POINT IV

IT IS WITHIN THE DISCRETION OF THE TRIAL COURT TO PERMIT A PARTY TO APPEAR PRO SE AS WELL AS BY COUNSEL. SUCH DISCRETION SHOULD BE EXERCISED ONLY IN RARE CIRCUMSTANCES. THE DISTRICT COURT'S REFUSAL TO PERMIT IT IN THIS CASE WAS NOT AN ABUSE OF DISCRETION.

The right of a party to appear personally or by counsel in courts of the United States is specifically provided for by statute:

> "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. Sec. 1654.

It is well settled, however, that a party has no right to hybrid representation both pro se and by

counsel. In Brasier v. Jeary, 256 F.2d 474 (8th Cir. 1958), a civil suit, it was held, at page 478:

> "We conclude that the appellant has no constitutional or other right to conduct his own case pro se and have the aid of counsel to speak and argue for him at the same time."

See also United States v. Foster, 9 F.R.D. 367 (S.D. N.Y. 1949); Keogh v. Pearson, 35 F.R.D. 20 (D.D.C. 1964).

Although a Federal Court does have the discretionary power to permit a party to appear both pro se and by counsel, it should do so only in rare circumstances. In the case of Overholser v. DeMarcos, 149 F.2d 23 (D.C. Cir. 1945), a habeas corpus proceeding commenced by a patient committed to a mental institution, the appellate court in reviewing the trial court's handling of the case said, at page 26:

> "During the hearing, the petitioner was represented by counsel. Nevertheless the court permitted petitioner to conduct the trial while his counsel sat silent. This is an undesirable practice. Where a party is represented by competent counsel his case should be conducted by that counsel unless it becomes apparent that the interests of justice require the party's active participation pro se. Such circumstances are rare and were not present in this case. The Court apparently thought that the interests of justice required it to permit petitioner to examine witnesses because of the opportunity it gave for observation of petitioner during the trial with respect

> to his sanity. But it is better practice for the court to make that kind of observation by questioning the patient himself." (Emphasis supplied.)

The question of the trial court's discretion was also contemplated by Judge Medina in United States v. Foster, supra, 9 F.R.D. at 372:

> "Were I convinced that these applications are based upon a genuine belief on the part of ... (the defendant) that he could on his own behalf make a better summation on the evidence in the record, and by lawful and proper arguments, than could ... (his attorney), I should without hesitation, permit him to sum up.
>
> "The circumstances under which the applications are made, however, and the comments both of ... (the attorney and the defendant), demonstrate quite clearly that the alleged discharge is colorable and not made in good faith, and I so find." (Emphasis supplied.)

Mr. Tilney attempted to accomplish exactly the same maneuver which was attempted in the Foster case. Mr. Tilney, through his attorneys, made no objection to the final account; his attorneys thereafter sought permission to withdraw, followed immediately by an application by Mr. Tilney to proceed with the prosecution of a surcharge on a pro se basis. Such maneuvering cannot possibly be considered as being founded in good faith. There can be no question but that this was nothing more than a transparent attempt by Mr. Tilney to gain individual

control of the prosecution of a frivolous surcharge unimpeded by the advice and tempering effect of experienced counsel.

Furthermore, in the Brasier case the appellate court in referring to the "rare circumstances" mentioned in the Overholser case, said:

> "The determination of when such situations arise rests squarely with the trial judge who bears the responsibility for the orderly conduct of the trial, and an appellate court should not interfere with the trial court's exercise of that discretion."

Brasier v. Jeary, supra, 256 F.2d at 478. See also Sanchez v. United States, 311 F.2d 327 (9th Cir. 1962).

It is clear that the instant case did not involve one of the "rare situations" in which a party should be permitted to appear pro se as well as by counsel. The court below was well aware of defendant Frederick Tilney's attempts to frustrate the efforts of the receivers over a period of six years.

In view of the record in this case, and in view of the nature of the individual defendant involved, as known to the court below, there was certainly no abuse of discretion in the lower court's refusal to permit Frederick Tilney to proceed pro se.

POINT V.

A COURT APPOINTED RECEIVER IS A QUASI-JUDICIAL OFFICER WITHIN THE DOCTRINE OF JUDICIAL IMMUNITY.

In a case strikingly similar to the Tilney case (except for the fact that the individual involved had been sentenced to thirty-five years in prison on the criminal charges), the defendant in the receivership brought an action, as plaintiff, in Federal Court, alleging that the receiver, among others, conspired to deprive him of his "liberty and property" in violation of the constitutional protection afforded those civil rights. One item of relief demanded was the sum of $25,000,000.00 as monetary damages. The court dismissed the case and held that as far as the receiver was concerned:

> "The court appointed receiver is a quasi-judicial officer within the protection afforded by the doctrine of judicial immunity. ***** As a receiver duly appointed by the Court, it is evident that (the receiver) acted only pursuant to court direction and thus is protected by the judicial immunity doctrine and immune from suit". Smallwood v. United States, 358 F. Supp. 398 (E.D. Mo. 1973) at 404, aff'd 486 F. 2d 1407 (8th Cir. 1973).

It is submitted that receivers Hogan and Harris acted only pursuant to court direction and are likewise protected by the doctrine of judicial immunity.

POINT VI

THE CLAIM OF "SURCHARGE" WAS NOT A TRUE SURCHARGE, BUT AN ATTEMPT TO CIRCUMVENT THE DOCTRINE OF JUDICIAL IMMUNITY IN ORDER TO REDUCE ALLOWANCES

A basic legal principle seems to have escaped Mr. Tilney, i.e., that a surcharge is not a proceeding or action separate or distinguishable from the account itself. Black's Law Dictionary defines the word "surcharge" (in equity practice) as follows:

> "To show that a particular item, in favor of the party surcharging, ought to have been included, but was not, in an account which is alleged to be settled or complete. To prove the omission of an item from an account which is before the court as complete, which should be inserted to the credit of the party surcharging". BLACK'S LAW DICTIONARY 1684 (3d ed. 1933)

If a surcharge is made, it should be made at the time of the receiver's account. Phelan v. Middle States Oil Corporation, 154 F.2d 978 (2d Cir. 1946). See also: TARDY'S SMITH ON RECEIVERS, VOLUME II, SECTIONS 613, 614, 2d ed.

A claim of surcharge, then, is in the nature of an exception or objection taken to an account. As such, it is an integral part of the account proceeding and is not separable therefrom. It follows, then, that if defendant Tilney was to have proceeded with the "surcharge",

he should have done so by objecting to the final account. The account, if such a claim of surcharge were properly stated, could not be approved until the validity of the objection was determined. At the aforementioned hearing of October 2, 1973, Mr. Tilney and his attorneys unequivocally stated in open court that they had no objection to the account as filed (above, p.38). Said counsel's subsequent request that they be permitted to withdraw and that Frederick Tilney be permitted to proceed pro se on a surcharge claim was a ruse, since the lack of objection to the account would have been rendered illusory by the subsequent granting to Mr. Tilney of the right to proceed pro se. The attempted circumvention, then, is obvious. Since a damage suit was barred by the doctrine of judical immunity, Mr. Tilney attempted to use a surcharge as a device to reduce or recoup administrative allowances.

POINT VII

GROUNDS FOR A VALID CLAIM OF SURCHARGE WERE NOT ESTABLISHED OR ALLEGED IN THE COURT BELOW. THERE WAS SUFFICIENT EVIDENCE BEFORE THE DISTRICT COURT FOR IT TO DISMISS SAID CLAIM AS A MATTER OF LAW.

Mr. Tilney did not allege grounds for a surcharge as a matter of law. This contention is supported by recognized authorities:

"A surcharge will not be made unless there is data or evidence warranting it, and the burden of adducing such evidence rests on the exceptant or party making the charge of improper conduct. The exercise of bad judgment, in itself, is not sufficient to sustain a surcharge." 75 C.J.S. Receivers, Sec. 378.

"Where property has been sold by the receiver, he will be held liable for the amount of the sale; and where the property was sold for less than its appraised value or two thirds thereof, the receiver may, under some circumstances, be surcharged for the difference between the price received and the appraised value or two thirds of the appraised value; but where the receiver has in good faith sold property under the direction of the court, and appears to have procured the best price obtainable, he should be required to account for its value only as shown by the price received, and not for a higher value as shown by an inventory previously taken by the owner; *** and he will not be charged with the face value of securities which he sold for less where he apparently sold for the best price obtainable and for years no objection to, or protest against, his action was made or suggested. Id.

"Exceptions should be clear, precise, and certain in respect of the credit to which an objection is made; the objection should apprise the receiver of what he will be called upon to defend." 66 Am. Jur. Receivers, Sec. 350.

The federal courts seem to have adopted a similar view:

"Just as exceptants to an item charged to the account of a receiver bear the burden of proof, *** movants here were obliged to allege facts showing the imprudence of the settlement." Securities & Exchange Commission v. Arkansas Loan & Thrift Corp. 297 F. Supp. 73 (W.D. Ark. 1969), aff'd, 427 F.2d 1171 (8th Cir. 1970).

It is respectfully submitted that the court below had before it more than enough evidence for a summary dismissal of the purported surcharge as a matter of law (see above, p. 37).

POINT VIII

IT IS WITHIN THE DISCRETION OF THIS COURT TO AWARD THE RECEIVERS COUNSEL FEES AND OTHER COSTS AND EXPENSES UPON APPEAL. SUCH DISCRETION SHOULD CLEARLY BE EXERCISED IN THIS CASE.

It is a long established principal of common law that a fiduciary can be entitled to payment of costs and expenses (including counsel fees) from the estate, upon the appeal of his account. Whether or not an item of attorneys' fees is chargeable against the estate depends largely upon the good faith of the fiduciary. Matter of Guggino, 166 Misc. 426, (Surr. Ct. Monroe Co., 1938).

In New York, section 2302(5) S.C.P.A. provides as follows:

> "5. After appeal, pursuant to the direction of the appellate court the court may award a fiduciary such sum as it deems reasonable for counsel fees and other expense necessarily incurred on the appeal."

In addition to the above, it should be pointed out that Rule 38, Federal Rules of Appellate Procedure provides as follows:

"Rule 38. Damages for Delay

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee."

Moreover, Title 28 U.S.C. section 1912 provides:

"Section 1912. Damages and costs on affirmance

Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs."

Although the term "damages for delay" is used in the above statute and rule, it should be noted that courts of appeal quite properly allow damages, attorneys' fees, and other expenses incurred by an appellee if the appeal is frivolous, without requiring a showing that the appeal resulted in delay. (See: NOTES OF ADVISORY COMMITTEE ON APPELLATE RULES, Title 28 U.S.C.A., Federal Rules of Appellate Procedure, Rule 38; and cases cited therein. As to particular frivolous appeals see: Eaton v. New Hanover County Bd. of Ed., 459 F.2d 684 (4th Cir. 1972), Fluoro Electric Corporation v. Branford Associates, 489 F.2d 320 (2nd Cir. 1973), Commercial Wholesalers v. Investors Commercial Corp., 172 F.2d 800 (9th Cir. 1949).

The appeal in the instant case is clearly frivolous and the Court is respectfully urged, in the interests of justice, to exercise its discretion and award the receivers costs, counsel fees and other expenses necessitated by this appeal.

CONCLUSION

For the foregoing reasons, all judgments, orders and rulings of the District Court should be affirmed, insofar as they apply to receiver-appellee Joseph C. Hogan, to Wagner, Quillinan & Tennant, attorneys for the receivers and to Hertz, Herson & Co., accountants for the receivers; and this Court should award the costs and expenses of this appeal, including counsel fees, to said receiver-appellee.

Respectfully submitted,

WAGNER, QUILLINAN & TENNANT

Attorneys for Receiver-Appellee
Joseph C. Hogan

Of Counsel:

Robert F. Mulligan

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff-Appellee,** *- against -* **TILNEY & COMPANY, FREDERICK TILNEY, Defendants-Appellants.**	*Index No.* *Affidavit of Personal Service*

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, James Steele, *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 250 West 146th, Street, New York, New York

That on the 7th *day of* July *19* 75 *at* 1) 39 E. 68th Street, N.Y., N.Y. 2) 26 Federal Plaza, N.Y., N.Y. 3) 292 Madison Ave, N.Y., N.Y.

deponent served the annexed Brief *upon* 1) Saxe Bacon Bolan & Manley 2) Securities & Exchange Commission 3) Shaw Bernstein Scheuer & Hawkins

the Attorneys *in this action by delivering a* 2 *true copy* es *thereof to said individual personally. Deponent knew the person so served to be the person mentioned and described in said papers as the* Attorney(s) . *herein.*

Sworn to before me, this 7th *day of* July *19* 75

Robert T. Brin

James Steele

JAMES STEELE

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977